

**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

Docket No. 2001-351

August 6, 2001

**SACO RIVER TELEGRAPH AND TELEPHONE
COMPANY, COMMUNICATIONS DESIGN, INC.,
SACO RIVER ACQUISITION CORPORATION,
COMMUNICATIONS DESIGN ACQUISITION
CORPORATION and THE PINE TREE TELEPHONE
AND TELEGRAPH COMPANY**

**Re: Joint Application for Approvals Related to the Sale
of Assets of Saco River Telegraph and Telephone
Company and Communications Design, Inc. and for
Exemption from Approval for Certain Future
Reorganizations**

STIPULATION

1. Introduction. On May 25, 2001, Saco River Telegraph and Telephone Company (“Saco River”), Communications Design, Inc. (“CDI”), Saco River Acquisition Corporation (“SRAC”), Communications Design Acquisition Corporation (“CDAC”) and The Pine Tree Telephone and Telegraph Company (“Pine Tree”) (all Applicants being hereinafter referred to as the “Joint Applicants” or “Applicants”) filed a Joint Application seeking all Commission approvals related to the sale by Saco River and CDI (the “Sellers”) of certain of their assets, including those used to operate their local and interexchange telephone operations to SRAC and CDAC (the “Purchasers”) respectively. In addition, Pine Tree sought authority to provide a guaranty, secured by its assets, in support of a new loan from CoBank to Pine Tree’s owner, Pine Tree Holdings, Inc. (“PTHI”) which, when made, will re-finance PTHI’s existing CoBank loan.

On June 1, 2001, the Office of the Public Advocate filed a Petition to Intervene/Notice of Intervention. On June 27, 2001, the Joint Applicants filed a Motion for Protective Order to enable them to file the Asset Purchase Agreement dated as of May 21, 2001, (the “Agreement”) which describes the transaction under review in this Docket. The Hearings Examiner issued a Protective Order on July 5, 2001, and the Joint Applicants filed the Agreement on the same day, subject to that Order.

The Staff, the Public Advocate and the Joint Applicants have engaged in informal discovery and conducted settlement discussions. Based on these discussions, the parties to this Docket have agreed to this Stipulation, and hereby recommend its approval by the Commission.

2. Stipulation

The parties agree as follows:

A. Description of Parties and Transaction

1. The Sellers. Saco River, an independent local exchange and interexchange carrier, is a wholly-owned corporate subsidiary of Rural Cellular Corporation (“RCC”). CDI owns and operates a microwave network (the “CDI Microwave Business”). CDI also operates as an interexchange carrier, Internet service provider and competitive local exchange service provider (the “CDI Non-Microwave Businesses”). CDI is an indirect wholly-owned subsidiary of RCC. The Commission reviewed and approved the existing corporate structure of Saco River, CDI, and their affiliates, in Saco River Telegraph and Telephone Company, Request for Approval of Affiliated Interest Transaction, Reorganization and Transfer of Assets from Saco River Telegraph and Telephone Company with Rural Cellular Corporation, MPUC Docket No. 2000-541, Order Approving Stipulation, Reorganization and Affiliated Interest Transactions; Authority to Provide Service (November 9, 2000) (the “Saco River Order”). The Saco River Order approved a corporate reorganization whereby RCC acquired ownership of the predecessor-in-interest of Saco River and various affiliates holding interests and assets which are not subject to regulation by the Commission.

In the transaction now before the Commission, RCC will cause Saco River and CDI to sell certain of their assets, including those used to operate their local and interexchange telephone operations, to the Purchasers, who will then carry on the businesses presently being conducted by the Sellers (other than the CDI Microwave Business, which CDI will continue to operate after the close of the transaction). Upon the consummation of the transaction, neither RCC nor any of its affiliates will be Maine public utilities, nor will RCC or any of its affiliates be affiliated with any Maine public utility. Therefore, neither RCC nor any of its affiliates will, after this transaction closes, be subject to Sections 707 (affiliated interests), 708 (reorganizations) or any other provision of Title 35-A.¹

2. The Purchasers. SRAC and CDAC are wholly-owned subsidiaries of Country Road Communications, Inc. (“CRC”) which were formed by CRC for the purpose of acquiring the assets of Saco River and CDI respectively. CRC also owns PTHI which, in turn, owns the common stock of Pine Tree. The Commission reviewed and approved the existing corporate structure of CRC and Pine Tree in The Pine Tree Telephone and Telegraph Company, Request for Approval of Reorganization and for Exemption from Approval of Certain Future Reorganizations, Docket 99-381, Order Approving Reorganization, (December 23, 1999) and Supplemental Order (December 30, 1999) (the “Pine Tree 381 Orders”), and approved the creation of PTHI as an intermediate entity owned by CRC and

¹ Unless otherwise noted, all statutory references are to Title 35-A of the Maine Revised Statutes.

owning Pine Tree in The Pine Tree Telephone and Telegraph Company, Request for Approval of Reorganization, Docket No. 2000-667, Order Approving Reorganization (November 8, 2000) (the “Pine Tree 667 Order”).

Upon consummation of the transaction now before the Commission, CRC will transfer the common stock of both SRAC and CDAC to PTHI. CRC plans for SRAC to continue the operations of Saco River as a separate telephone company, doing business as Saco River Telephone Company, and has no plans to change Saco River’s services or rates as a result of this transaction. As this indicates, upon the closing of the transaction, SRAC will become a Maine telephone utility providing local exchange and interexchange telephone service to the same extent, and in the same localities, as that presently offered by Saco River, operating under the name Saco River Telephone Company. Similarly, CDAC will succeed to, and continue the operation of, the Non-Microwave Businesses of CDI.

3. Financing of Transaction. PTHI will finance its acquisition of SRAC and CDAC through a loan from CoBank, ACB (“CoBank”). The loan will be secured by PTHI’s pledging its SRAC and CDAC stock to CoBank.² In addition, SRAC and CDAC will guarantee the repayment of this loan, and will secure this guaranty by providing CoBank with security interests in all of their assets.

At the same time, PTHI will refinance its existing CoBank debt with a new loan from CoBank. (The Commission issued the necessary approvals for the existing loan, which was originally made to CRC, in Pine Tree Telephone Company, Request for Approval of Affiliated Interest Transaction and for Authorization of Security Agreement, Docket 99-929, Order Approving Affiliated Interest Transaction and Related Security Agreement (January 11, 2000) (the “Pine Tree 929 Order”), and approved the assignment of the obligations of the loan from CRC to PTHI in Pine Tree Telephone Company, Request for Approval under Section 707 of Affiliated Interest Transaction and for Authorization of Security Agreement, Order Approving Affiliated Interest Transaction and Related Security Agreement (December 6, 2000) (the “Pine Tree 957 Order”). (As noted above, the Commission had approved the formation of PTHI as an intermediate entity (owned by CRC and owning Pine Tree) in the Pine Tree 667 Order.)

The replacement loan will be secured by PTHI’s pledge of its Pine Tree stock to CoBank, further supported by a Pine Tree guaranty of the debt, secured by a pledge to CoBank of Pine Tree’s assets. Thus, the financing arrangements proposed both for PTHI’s acquisition of SRAC and CDAC, and for its refinancing of its existing CoBank debt related to its acquisition of Pine Tree, will be substantially similar to those approved by the Commission in the Pine Tree 929 Order.

² In light of prior Commission rulings, the parties understand that the issuance of a pledge of public utility stock (or the stock of an affiliated interest) does not require Commission approval, provided that the pledgee’s exercise of its pledge may require Commission approval under Section 708. See the Pine Tree 929 Order at 2.

B. Approvals To Be Granted

1. Petitions to Intervene Granted. The parties recommend that the Commission grant intervenor status to the Office of the Public Advocate.

2. Reorganization Statute Issues. Certain aspects of the transaction require approval under the reorganization statute (Section 708), as follows, because they are not included within the exemptions set forth in the Stipulations approved in the Saco River Order and in the Pine Tree 381 Orders:

A. The formation by CRC of the Purchasers as subsidiaries of PTHI results in the creation of affiliated interests of Pine Tree which may perform regulated activities formerly or simultaneously performed by Pine Tree, causing a reorganization of Pine Tree which may not be subject to the exemption in the Pine Tree 381 Orders;³

B. Pine Tree and CDAC's becoming affiliates of SRAC at closing, causing a reorganization of SRAC;⁴

As to these reorganizations, the parties recommend that the Commission find that following the reorganizations:

- a.. SRAC will be able to attract capital on reasonable terms;
- b. SRAC's ability to provide safe, reasonable and adequate service will not be impaired by the reorganizations,
- c. SRAC will be subject to all applicable laws, principles and rules that govern public utilities;
- d. SRAC's credit will not be impaired or adversely affected by the reorganizations;

³ Although it is not clear at this point that the Purchasers are created as a result of a restructuring of Pine Tree that results in the creation of an affiliated interest of Pine Tree intended to perform regulated activities formerly or simultaneously performed by Pine Tree, the Parties recommend that the Commission grant approval to the extent it may be required. The parties do not believe that the issuance by SRAC and CDAC of all of their stock to CRC requires Commission approval under Section 902, since the issuance and formation occurred at a time when neither entity was a public utility.

⁴ Note that the Joint Applicants are requesting (in Section C(1) below of this Stipulation) that the Commission exempt CDAC from both the affiliated interest (Section 707) and reorganization (Section 708) statutes, just as CDI, as a competitive local exchange and interexchange carrier, is presently exempt.

- e. The Commission will retain the power to impose reasonable limitations on the total level of SRAC's involvement in non-utility business; and
- f. Neither ratepayers nor investors will be adversely affected.

In addition, the parties recommend that the Commission impose the following conditions on its approval of the reorganizations:

- (A) SRAC will provide the Commission with reasonable access to books, records and documents relating to its telephone operations, subject to the ability of SRAC to request that the Commission prevent public disclosure of such books, records and documents and that the Commission afford such protection as may be necessary in accordance with the Maine Rules of Civil Procedure; and
- (B) The Commission will have the authority under §707 and §708 to review and approve covered transactions between SRAC and its affiliated interests to the extent they remain affiliate interests, except as such transactions might be exempted by the Commission from the approval requirements.
- (C) In addition to (A) and (B), above, SRAC will also comply with the provision regarding Access to Records in Section III(B)(1) of the Stipulation approved in the Pine Tree 381 Orders, with the exception of the requirement to file quarterly reports.

Based on the foregoing, the parties recommend that the Commission grant all approvals necessary under the reorganization statute for the transaction as described herein to be consummated.

3. Sale of Assets. In this transaction, Saco River and CDI will be selling all of their assets that are necessary or useful in the performance of their duties to the public and which are subject to regulation by the Commission. Saco River's assets will be owned and controlled by SRAC, which will provide telephone service to Saco River's customers as a public utility subject to the jurisdiction of this Commission. Inasmuch as CRC and Pine Tree are familiar with the operations and obligations of Maine telephone utilities, the parties recommend that the Commission give its approval under Section 1101 to the proposed asset sales by Saco River and CDI.⁵

4. Abandonment of Service. Upon closing on the transaction, the services that Saco River and CDI provide to customers subject to the jurisdiction of this Commission will

⁵ The Parties agree that the transfer of Saco River's assets to SRAC does not constitute either a "reorganization" within the meaning of the statute or a "restructuring," within the meaning of the Saco River Order, and is therefore within the exemption from the operation of Section 708 granted in that Order.

be continued by SRAC and CDAC respectively, again subject to this Commission's jurisdiction. Accordingly, the parties recommend that the Commission give its approval under Section 1104 for Saco River and CDI to abandon the provision of public utility service.

5. Authorization to Serve. The parties recommend (1) that SRAC and CDAC be authorized to serve under Section 2102 with the same authorities currently possessed by Saco River and CDI so that the present customers of Saco River and CDI will continue to obtain service, and (2) that the Commission determine that neither SRAC nor CDAC are required to file separate applications for authority to serve pursuant to Section 4 of Chapter 280 of the Commission's Rules.

6. Affiliated Interest Transaction Approvals. The parties recommend that the Commission approve the following affiliated interest transactions, as required under Section 707:

A. SRAC and Pine Tree entering into transactions with their affiliated interests (including with each other) pursuant to a Standard Support Services Agreement, a copy of which is appended to the Stipulation. This Standard Support Services Agreement is similar to the Standard Support Services Agreement approved for Saco River in the Saco River Order and the Support Services Agreement between Pine Tree and CRC and its Subsidiaries which was filed with the Commission by Pine Tree on June 23, 2000, and was deemed approved under Section 707. Within 30 days of the Commission's Order approving this Stipulation, SRAC will file a new Cost Allocation Manual ("CAM") which is similar to the CAM filed by Pine Tree on June 23, 2000, for the Commission's review and approval. The parties recommend that the Commission delegate the authority to approve the SRAC CAM to its Director of Finance.

B. As discussed above, Pine Tree and SRAC will be issuing guaranties of the CoBank loans to PTHI. These guaranties are consistent with the public interest as they facilitate the provision of capital on reasonable terms for the financing of SRAC and Pine Tree, are limited to loans associated with each company (with the exception of SRAC's guaranty of the comparatively small amount of the SRAC-related loan that funds PTHI's acquisition of the property associated with CDI's Non-Microwave Businesses), and will be made on terms substantially the same as the arrangements previously approved by the Commission for Pine Tree in the Pine Tree 929 Order. The parties recommend that the Commission grant its approvals of these guaranties.

C. Certain obligations of SRAC under the Agreement may survive the closing of this transaction. The performance of these obligations will be guaranteed by CRC and PTHI, and the issuance of the guaranties will constitute affiliated interest transactions, for which the parties recommend that the Commission grant its approval.

7. Schedules of Rates, Terms and Conditions; Confirmation of Saco River Stay-Out and Other Arrangements. Upon closing, SRAC and CDAC will adopt Saco River's and

CDI's Schedules of Rates, Terms and Conditions on file as of the closing date. Although a utility's initial rate schedules may not require the prior approval of the Commission, the Joint Applicants request that the Commission confirm the applicability of these schedules to the services to be provided by SRAC and CDAC respectively.

In addition, SRAC agrees that it will adhere to the "Stay-Out," "Waiver of Acquisition Adjustment" and "Construction Commitment; Continuity of Work Force" provisions contained in Sections 9, 10 and 11 of the Revised Stipulation dated November 2, 2000 (the "Saco River Stipulation"), as adopted by the Commission in the Saco River Order. The same provisions are incorporated herein and apply to this transaction.

8. Security Interests. The Parties recommend that SRAC, CDAC and Pine Tree be authorized, under Section 1101, to grant security interests in all of their property to secure the guaranties referenced above, which will be issued in support of the CoBank loans. These security interests are consistent with the public interest as they facilitate the provision of capital on reasonable terms for the financing of SRAC and Pine Tree, are limited to loans associated with each company (with the exception of SRAC's guaranty of the comparatively small amount of the SRAC-related loan that funds PTHI's acquisition of the property associated with CDI's Non-Microwave Businesses), and are similar to the financing arrangements previously approved by the Commission for Pine Tree in the Pine Tree 929 Order.

C. Reorganization and Affiliated Interest Statute Exemptions

1. CDAC Reorganization and Affiliated Interest Statute Exemption. The parties recommend that, in conformity with long-standing precedent with respect to competitive local and interexchange carriers, the Commission grant to CDAC blanket exemptions from the reorganization (Section 708) and affiliated interest (Section 707) statutes as currently apply to CDI.

2. Affiliated Interest and Reorganization Statute Exemption for SRAC. The parties recommend that the Commission confirm that Prudential Insurance Company of America or any future holder of Initial Preferred Stock, New Preferred Stock or Voting Security Preferred Stock of CRC is not an affiliated interest of SRAC, provided that there is compliance with the terms and conditions of Section III(C) of the Stipulation approved by the Pine Tree 381 Orders; and, that the Commission grant to SRAC an exemption from the reorganization statute that is identical to the exemption and exceptions to that exemption afforded Pine Tree in Section III(D) of the Revised Stipulation accepted by the Commission in the Pine Tree 381 Orders, provided that the exception contained in Section III(D)(2)(d), referring to a "restructuring of PTW" shall be understood to apply to CRC,⁶ to PTHI, and to any other future affiliated interests of SRAC or Pine Tree that are in the ownership chain above SRAC or Pine Tree. Similarly, the definition contained in Section IIID)(7)(b) shall

⁶ The entity "PTW" in the Stipulation was subsequently named Country Road Communications, Inc. (CRC).

apply to CRC, PTHI or any other future affiliated interests of SRAC or Pine Tree that are in the ownership chain above SRAC or Pine Tree, except that those provisions concerning the “Voting Security Preferred Stock of PTW” (now known as CRC) shall apply only to CRC.⁷

Having both Pine Tree and SRAC subject to identical reorganization exemptions would promote ease of administration and avoid needless confusion. The exemption and exceptions afforded Pine Tree were considered by the Commission in the Pine Tree 381 Order, and the parties agree that they should be adopted in this case subject to further revisions that are presently being discussed among the Public Advocate, the Commission Staff, Pine Tree, SRAC, PTHI and CRC and that will apply to both Pine Tree and SRAC.

D. Standard Stipulation Provisions.

1. Purpose; Rejection of Portion Constitutes Rejection of Whole. The parties are entering into this Stipulation for the purpose of finally disposing of all issues raised in this Docket. If the Commission does not accept the entire Stipulation without material modification, then the Stipulation shall be null and void, and will not bind the parties in this proceeding.

2. No Precedent. The making of this Stipulation by the parties shall not constitute precedent as to any matter of fact or law, nor, except as expressly provided otherwise herein, shall it foreclose any party from making any contention or exercising any right, including the right of appeal, in any other Commission proceeding or investigation, or in any other trial or action.

3. Examiner’s Report. The parties agree to waive the provisions of § 752 (b) of the Commission’s Rules of Practice and Procedure, requiring that any Examiner’s Report be in writing and that the parties be afforded an opportunity to file exceptions or comments thereon. The parties thereby intend to permit the Advisors either to provide an oral Examiner’s Report to the Commission at the deliberative session to be held in this Docket, or, if the Advisors so wish, to provide a written Examiner’s Report to the Commission with the parties waiving the right to file exceptions or comments thereto.

IN WITNESS WHEREOF, the parties have caused this Stipulation to be executed and delivered, or have caused their lack of objection to be noted, by their respective attorneys.

⁷ The Parties understand that, upon its review of a request for approval of a restructuring of CRC, PTHI or any other affiliated interest in the ownership chain above SRAC or Pine Tree, which results in the creation of a new affiliated interest in the ownership chain above SRAC or Pine Tree, the Commission will consider any request for an exemption with regard to subsequent restructurings of that new affiliated interest.

SACO RIVER TELEGRAPH AND
TELEPHONE COMPANY

Dated:_____

By:_____
[Name and Title]

COMMUNICATIONS DESIGN, INC.

Dated:_____

By:_____
[Name and Title]

SACO RIVER ACQUISITION
CORPORATION

Dated:_____

By:_____
[Name and Title]

COMMUNICATIONS DESIGN
ACQUISITION CORPORATION

Dated:_____

By:_____
[Name and Title]

THE PINE TREE TELEPHONE AND
TELEGRAPH COMPANY

Dated:_____

By:_____
[Name and Title]

OFFICE OF THE PUBLIC ADVOCATE

Dated:_____

By:_____
[Name and Title]